NEWS RELEASE

Release Number: **13** Release Date: **February 16, 2006**

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
Public Information Office
455 Golden Gate Avenue
San Francisco, CA 94102-3688
www.courtinfo.ca.gov

415-865-7740

Lynn Holton
Public Information Officer

Court of Appeal Holds Special Session at Contra Costa County High School

San Francisco—Over 300 high school students from Contra Costa County will hear oral arguments before the Court of Appeal, First Appellate District, Division Five, at 9 a.m. on February 22, 2006, Presiding Justice Barbara J.R. Jones announced today.

The public is invited to attend this special session, to be held at Acalanes High School, 1200 Pleasant Hill Road, Lafayette.

The school visit is designed to introduce students to the appellate court system. Case summaries, prepared by attorneys from the Contra Costa Bar Association, will be distributed before oral argument. (Attached below).

As part of this educational experience, the justices will attend a breakfast with students before the 9 a.m. hearing. After argument, bar association attorneys will discuss the proceedings with students and answer questions.

The program arrangements are a collaborative effort of Presiding Justice Jones, Associate Justice Mark B. Simons and Associate Justice Linda Marino Gemello with Acalanes High School teacher Larry Freeman, and the Contra Costa Bar Association's Christine Morrissey and attorneys Richard Frankel and Kevin Brodehl.

CASES TO BE ARGUED

People v. Williams, A109471. In this case, the defendant challenges his conviction for manufacturing cocaine base and argues that the court incorrectly denied his motion to suppress evidence.

Graff v. Vallejo City Unified School District, A106121. This case is an appeal of a defense judgment in an employment discrimination case.

(over)

Graff v. Vallejo City Unified School District, A108600. This is an appeal by the plaintiff in the same case from the denial of her postjudgment motion for attorney fees.

The First Appellate District ordinarily holds oral argument in its courtroom in the Earl Warren State Building, 350 McAllister Street, in San Francisco. The court also conducts an outreach program where middle school students are invited to visit court sessions in San Francisco.

For more information, call Diana Herbert, Clerk/Administrator of the Court of Appeal, First Appellate District, at 415-865-7300.

#

Case summaries for *People v. Williams*, A109471, *Graff v. Vallejo City Unified School District*, A106121; and *Graff v. Vallejo City Unified School District*, A108600.

CASE #1

The People of the State of California (Plaintiff/Respondent)
v.
Ricky L. Williams (Defendant/Appellant)

I. ISSUE ON APPEAL

Ten Richmond Police officers with a valid search warrant entered Defendant Williams' apartment, and found him in the kitchen cooking cocaine base on the stove. During his criminal court case, Williams filed a motion to exclude all evidence against him on the grounds that the search violated the Fourth Amendment of the United States Constitution because the Police failed to comply with the legal requirements of the "Knock-Notice Rule" for executing search warrants.

The trial court denied the motion, finding that while the Police did not strictly comply with the Knock-Notice Rule, the search was still valid because they "substantially complied." Williams (maybe sensing he was "cooked"), accepted a plea deal requiring a one year jail sentence and three years of probation. Williams later filed an appeal, asserting that the trial court erred in denying his motion to exclude evidence. He wants the Court of Appeal to reverse the trial court's decision and overturn his conviction.

II. FACTS

[This is a rare case where both sides agree on almost all the facts…]

In the evening of January 9, 2004, ten Richmond Police officers arrived at an apartment complex in Richmond to execute a search warrant. Officer Mario Chesney was in charge. Officer

Chesney had received a tip from a confidential informant that a black male adult had been selling cocaine out of the apartment. Based on that tip, the court had issued a search warrant.

Before going in, Officer Chesney conducted surveillance from the street outside the second-floor apartment, and saw the profile and back of Defendant Williams standing in the kitchen, looking down at something and moving his shoulders and arms. After ten minutes, Officer Chesney led the Police team up an interior set of stairs to the second level of the apartment building, and then down a long hallway to the rear of the complex – Williams' apartment. Officer Chesney wore a police vest and was armed with a weapon; the other officers were dressed in Richmond Police uniforms.

Officer Chesney did not hear or notice anything unusual on his approach to the apartment door. Upon reaching the apartment, he found a metal screen door closed and the front door wide open. He heard several people talking inside the apartment. It was dark outside and he did not recall if a hallway light was on outside the apartment.

He saw a female seated in a chair inside the apartment. As he checked the unlocked screen door knob, the female turned her face to the door. (The testimony is not clear as to whether the female actually made eye contact with Chesney, but she definitely turned to look at the screen door.) Immediately, Officer Chesney yelled out "Richmond Police, search warrant," and proceeded to open the door as he and the other officers walked quickly into the apartment. As they were crossing the threshold, Officer Chesney twice repeated his announcement, "Richmond Police Department, search warrant."

The Police ordered eight occupants inside the apartment to show their hands. Officer Chesney recovered several items from the apartment, including plastic sandwich bags, a digital scale, baking soda, a chunky white substance, and a hot stove pot containing an off-white substance that later tested positive for cocaine base.

III. LAW

A. Controlling Legal Authority

- **Fourth Amendment, U.S. Constitution** – Prohibits unreasonable searches and seizures.
- **California Penal Code Section 1531 (the "Knock-Notice Rule")** – "The officer may break open any outer or inner door or window of a house, or any part of a house or anything therein, to execute the warrant, if, *after notice of his authority and purpose, he is refused admittance*." (Emphasis added.) In short, the Rule aims to ensure that search targets will receive notice that the police are there, and an opportunity to allow peaceful entry.
- **Public Policies Underlying Knock-Notice Rule** –
    1. Protecting individual privacy in the home.
    2. Protecting innocent people present during the search.
    3. Preventing violent confrontations sparked by surprise.
    4. Protecting the police.
- **"Substantial Compliance" Rule** – Courts can ignore minor or technical police violations of the Knock-Notice Rule as long as the public policies above are served. Courts will generally examine whether the occupants of the building were aware of the officers' presence and purpose before entry. Here, the trial court found that while the police did not strictly comply with the Knock-Notice Rule, they met the "substantial compliance" test: "the officers could be certain that [Williams] and the other occupants were aware of their authority and purpose."

B. Best Cases / Arguments In Favor Of Williams

- People v. Neer (1986) 177 Cal.App.3d 991. In Neer, the Court of Appeal reversed a conviction where the police officers failed to allow adequate time to elapse between

their announcement and entry. After announcing his purpose and detaining one suspect in the front yard, the police officer approached an open front door and closed screen door through which he could see three occupants. He announced himself as a police officer, stated that he had a search warrant, and immediately opened the screen door and entered the house. The Court held the time between notice and entry was insufficient.

- People v. Hobbs (1987) 192 Cal.App.3d 959. In Hobbs, the Court of Appeal upheld a search, but only where there was a short lapse of time between announcement and entry. While executing a search warrant, the police officers approached an open front door and closed screen door. One officer knocked on the screen door and made eye contact through the door with a suspect standing in the kitchen. Within five to ten seconds, the suspect walked to within ten feet of the door and asked the officers what they wanted. The officers gave notice of their authority and purpose, and after another lapse of approximately five seconds, the officers opened the door and entered the residence. In what it recognized as a "close case," the Court upheld the search.
- Policy Argument: Officer Chesney's forcible entry without prior notice to the apartment occupants created a likelihood for a violent confrontation, and therefore the search did not serve the public policies underlying the Knock-Notice Rule. Officer Chesney saw only one female occupant while opening the door. But he knew from his prior surveillance and his observations on approaching the door that other people were also in the apartment, and those people could have been startled by the entry, and provoked to react violently.

C. Best Cases / Arguments In Favor Of The Prosecution

- People v. Tacy (1987) 195 Cal.App.3d 1402. In Tacy, the Court of Appeal upheld a search where entry followed the announcement by only "a matter of seconds." Without knocking, the police officer made eye contact with the occupant through a closed screen door, and stated that he had a search warrant and would be entering. He entered "seconds" later. The Court found "substantial compliance" with the Knock-Notice Rule.
- Policy Argument: Officer Chesney's failure to allow a few seconds to elapse between his announcement and entry was only a technical violation of the Knock Notice Rule. Chesney clearly announced his identity and purpose while opening the door, and one apartment occupant was looking at the screen door as he made his announcement. Delay before entry would have served no purpose. The conviction of someone who is obviously guilty should not be reversed due to such a minor and technical issue.

IV. RENDER YOUR DECISION

A. How should the Court of Appeal rule?

1. Affirm the trial court's order, and uphold Williams' conviction; or
2. Reverse the trial court's order and overturn Williams' conviction.

What factors in the case scenario and which elements of applicable case precedent and policy arguments best apply to this case? Use the case law to extract key principles to support your decision as to whether the trial court erred by refusing to exclude evidence from the search.

B. Write down any key questions as to law or fact that you may have for the attorneys who will visit your class the day before the Court of Appeal hearing. Write down any related questions you may have as to how Courts of Appeal work, how judges are appointed, procedural aspects, or anything else related to this process of judicial review.

CASE #2

Jane A. Graff (Plaintiff/Appellant)
v.
Vallejo City Unified School District (Defendant/Respondent)

I. ISSUES ON APPEAL

Jane Graff is a deaf substitute teacher with the Vallejo School District. For several years, she was able to get substitute work by calling a School District staff member called the "Substitute Clerk" and communicating with the Clerk using specialized communication devices described in more detail below. But the District switched to an automated, 24-hour a day phone system, which did not work with those specialized devices. Graff filed a civil lawsuit, claiming the District: (1) "retaliated" against her based on her disability, and (2) failed to provide her with a "reasonable accommodation."

With respect to the "retaliation" claim, the trial court granted what is called "nonsuit", meaning a victory for the District on the grounds that Graff failed to present any evidence showing that the District retaliated against her.

The jury considered Graff's "reasonable accommodation" claim, and voted 10-2 in favor of the District. (Unlike a criminal case, where the jury's decision must be unanimous, in a civil case a simple majority vote will constitute a verdict.)

Graff filed an appeal. She wants the Court of Appeal to reverse the trial court's nonsuit order on the grounds that there was ample evidence supporting her retaliation claim. She also wants the Court of Appeal to reverse the jury's verdict on the grounds that the judge improperly denied her jury instruction containing the term "equal access." If successful in her appeal, Graff would likely have the right to a new trial.

II. FACTS

A. Graff's Version Of The Facts

Plaintiff Graff is a deaf substitute teacher for the Vallejo City Unified School District, who has worked for the District since 1996. From 1996 until 1999, Graff learned of open teaching positions the same way every other substitute teacher did – by a telephone call from the Substitute Clerk each school day. Graff had no difficulty communicating with the substitute clerk using her specialized communication devices – Telecommunications Typing Device ("TTY") and the California Relay Service ("CRS"). Graff substituted frequently during this time period.

The School District decided in early 1999 that the manual notification system was not efficient enough for its needs, and bought an automated telephone system called Substitute Employee Management System ("SEMS"). The system consists of a database of all open teaching positions in the District, which could be accessed by telephone. Teachers call the system directly and post their absences, up to one year in advance, 24-hours a day. Substitute teachers can also call the system directly and hear about open teaching positions, 24-hours a day. When positions remain vacant, SEMS automatically calls substitutes whose teaching profiles match the vacancies.

Graff could not access the SEMS system. The system did not interface with Graff's communication devices. Not only was Graff unable to call into the system to find out about available positions, she also was unable to receive the calls that the system made to her. The only thing the District suggested was that Graff continue to find out about jobs by contacting the Substitute Clerk directly. Unfortunately, the Substitute Clerk was only available after 6:30 a.m. on weekdays. She was not available 24 hours a day. Usually, by the time Graff reached the Substitute Clerk, the jobs were already filled. Graff lost work and income as a result.

In March of 2002, Graff notified the District of a web-based system that she believed would be accessible for her. Graff filed her lawsuit in August 2002, alleging discrimination based on her disability. The District did not investigate a web-based system until early 2003. In May 2003, the District finally installed the web-based system, which would have made job information readily

accessible to Graff. However, the system had bugs, and did not work properly at the time that Graff's claims went to trial.

B. The School District's Version Of The Facts

The District's version of the facts agrees with the above, except for the following:

At first, Graff was willing to substitute in any class. But after 1999, Graff became more selective in her assignments, opting to work only in special education classes and only on certain days of the week. Graff was even offered substitute assignments numerous times during the 2003-2004 school year by email and through telephone calls with the Substitute Clerk, but Graff turned them down.

The old, manual Substitute Clerk system was terribly inefficient for the District. The Clerk would have to retrieve 85-100 messages from the answering machine beginning at 5:30 a.m. each school day, and then begin making calls to potential substitute teachers. Teaching vacancies frequently went unfilled, causing disruption to the school.

For a class without substitute coverage, the District would be forced to parcel students out to 4 or 5 other classrooms. This disrupted not only the classroom without coverage, but also the classrooms receiving the additional students. Parceling of students caused disruption to educational lesson plans and an increase in discipline. Parceling was also expensive as the District was required to compensate teachers for each student overage beyond the classroom size established by the collective bargaining agreement. In addition to parceling, principals or counselors were frequently pulled from their duties to cover classes without teachers.

The District spent more than $25,000 to implement the automated SEMS system. The system resulted in increased efficiency, as a higher percentage of substitute slots were filled on a daily basis.

III. LAW[1]

A. The "Retaliation" Claim

1. Legal Standards

- **Fair Employment And Housing Act** – Makes it illegal for an employer to retaliate against someone by firing them or taking any other "adverse action" because of their opposition to the employer's discrimination.
- **Nonsuit** – If there is no evidence supporting a claim, the trial court judge can grant "nonsuit." When nonsuit is granted, the claim is removed from the jury's consideration and defeated.

2. Graff's Argument

Graff argues that she presented enough evidence of retaliation for the claim to be submitted to the jury. She asserts that the District took "adverse action" against her by denying her the opportunity to work after installment of the automated SEMS system. Further, she contends that the District acted against her <u>because of</u> her ongoing complaints about not being able to access the SEMS system.

3. The District's Argument

The District argues that the trial court was correct in granting nonsuit on the retaliation claim. The District contends that its migration to the SEMS system was not motivated by any intent to retaliate against Graff. The District asserts that it pursued an automated system to increase efficiency, not to "get back" at Graff.

B. The "Reasonable Accommodation" Claim

1. Legal Standards

[1] In her appeal, Graff makes nearly a dozen separate, independent legal arguments relating to her various claims. This summary focuses on two of Graff's particular claims – "retaliation" and failure to provide "reasonable accommodation."

- **Fair Employment And Housing Act (FEHA), California Government Code Section 12900 *et seq.*** – It is unlawful for an employer "to fail to make reasonable accommodation of the known physical or mental disability of an applicant or employee."
- **Jury Instructions** – At the end of trial, the judge will give the jury instructions, which are meant to accurately explain the controlling law to a jury. If a jury instruction is flawed, and objected to, it might lead to reversal of the judgment on appeal. Here, Graff submitted a jury instruction containing the term "equal access." The trial court judge rejected this instruction, and instead used a form instruction based on the term "reasonable accommodation."[2]

2. Graff's Argument

[2] The trial court issued the following jury instruction:

A reasonable accommodation is a reasonable change to the workplace that [choose one or more of the following]
[cont'd next page]
[gives a qualified applicant with a disability an equal opportunity in the job application process;]

[allows an employee with a disability to perform the essential duties of the job;] [or]

[allows an employee with a disability to enjoy the same benefits and privileges of employment that are available to employees without disabilities.]

Reasonable accommodations may include the following:
a. Making the workplace readily accessible to and usable by employees with disabilities;

b. Changing job responsibilities or work schedules;

c. Reassigning the employee to a vacant position;

d. Modifying or providing equipment or devices;

e. Modifying tests or training materials;

f. Providing qualified interpreters or readers; or

g. Providing other similar accommodations for an individual with a disability.

If more than one accommodation is reasonable, an employer satisfies its obligation to make a reasonable accommodation if it selects one of those accommodations in good faith.

Graff contends that the trial court judge erred by refusing her proposed jury instruction, which described FEHA as requiring "equal access." Graff acknowledges that the phrase "equal access" is not in the statute, but argues that "equal access" is a fair analog or end result of "reasonable accommodation."

3. The District's Argument

The District agrees with the trial court that the phrase "equal access" misstates the law. The language of FEHA requires "reasonable accommodation." The District argues that the trial court correctly used a form FEHA jury instruction based on the "reasonable accommodation" concept.

IV. RENDER YOUR DECISION

A. How should the Court of Appeal rule on Graff's "retaliation" claim?

1. Affirm the trial court's order granting nonsuit; or

2. Reverse the trial court's order and let the jury to decide the claim.

B. How should the Court of Appeal rule on the "reasonable accommodation" claim?

1. Affirm the jury's verdict in favor of the District; or

2. Reverse the jury's verdict.

What key elements of the facts and core words from the law and jury instructions best support your decisions?

How do you verbally justify your position in this case and argue against those students who rule the other way?

What questions of fact, law, or process do you have for the attorneys who will visit your classroom the day before the hearing?

CASE #3

Graff
v.
School District
Part Two

I. ISSUE ON APPEAL

After losing at trial, Jane Graff filed a motion in the trial court seeking an order requiring the District to pay her attorney fees in the amount of $45,500. Graff argued that her lawsuit was the "catalyst" that forced the District to consider, and eventually implement, a web-based substitute system. The trial court denied the motion.

II. LAW

A. The "Catalyst Theory"

Under the catalyst theory, a court will examine the "impact of an action, not the manner of resolution." Fees may be awarded to a plaintiff who achieves her litigation objectives by forcing the defendant to change its conduct in response to the lawsuit. A party seeking attorney fees under a "catalyst" theory must demonstrate that: (1) a causal connection exists between the lawsuit and the defendant's corrective action; (2) defendant's conduct was required by law; and (3) the plaintiff reasonably attempted to settle the matter short of litigation before filing suit. (Graham v. DaimlerChrysler Corp. (2004) 34 Cal.4th 553, 575-578.)

B. Graff's Argument

Graff argues that while she lost her lawsuit, the lawsuit nonetheless forced the District to move to a web-based substitute system, which is fully accessible to those who are deaf and hearing impaired. Graff filed her lawsuit in August 2002. The District purchased the web-based system in December 2002, and the system was implemented in May 2003.

C. The District's Argument

The District contends that the trial court was correct in rejecting Graff's attorney fee motion because the move to a web-based system was not inspired by Graff's lawsuit. The District argues that the web-based system was the logical next step toward increased efficiency, and was not required to provide Graff with "reasonable accommodation." When the District first learned of the web-based system in early 2002 (before Graff's lawsuit), it was not yet available for purchase. As soon as it became available, the District purchased and implemented it.

III. RENDER YOUR DECISION

How should the Court of Appeal rule?

1. Affirm the trial court's order denying attorney fees to Graff; or
2. Reverse the trial court's order and award attorney fees to Graff.

What key elements best support your decision?

How do you verbally justify your position in this case and argue against those students who rule the other way?

What questions of fact, law, or process do you have for the attorneys who will visit your classroom the day before the hearing?